

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:10CV162-03-MU

KEVIN M. BAILEY,)
)
Plaintiff,)
)
v.)
)
JOHN C. PARKER, et al.,)
)
Defendants)
)

OR D E R

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed August 5, 2010 (Doc. No. 1.)

By his Complaint, Plaintiff alleges that on November 19, 2009, Defendants violated his Fourth Amendment rights by searching his home without a warrant. Plaintiff further alleges that his seized property was never returned to him and has since been sold.

This is Plaintiff's third Complaint alleges the same material facts. In his first case filed on June 11, 2010, Plaintiff complained about the seizure and confiscation of his property, not about the legality of that action. See Bailey v. O'Connor, et al., 10cv118-MU-1. The undersigned entered an Order dismissing Plaintiff's Complaint, without prejudice, on the basis of the post-deprivation remedy which North Carolina law provides for his allegation. In Plaintiff's second Complaint, Plaintiff modified his Complaint to include a Fourth Amendment violation. See Bailey v. O'Connor, et al., 1:10cv126-MU-2. The second case was dismissed with prejudice for failure to state a constitutional claim for relief. See Id., Doc. No. 4. The instant Complaint is essentially identical to the second Complaint except for the fact that Plaintiff does not include Sheriff O'Connor because "[Plaintiff] can't prove that he had any knowledge or knew about officer's constitutional

violations.” (Letter to Clerk of Court, attached to Complaint..)

The principle of res judicata operates to bar further claims by parties or their privies based on the same cause of action that has been previously adjudicated on the merits. See Young-Henderson v. Spartanburg Area Mental Heath Ctr., 945 F.2d 770, 773 (4th Cir. 1991). Therefore, the instant Complaint must also be dismissed due to principles of res judicata.

THEREFORE, IT IS HEREBY ORDERED that for the reasons set forth in this Order and in the Court’s previous Order (1:10cv126, Doc. No.4) and based on principles of res judicata, Plaintiff’s Complaint is dismissed.

SO ORDERED.

Signed: August 9, 2010



Graham C. Mullen
United States District Judge

